

Ruppert



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Do-Well Service & Supplies, Inc.

File: B-241178

Date: January 16, 1991

Mark L. Gelman, Esq., Gelman & Associates, for the protester.
Millard F. Pippen, Department of the Air Force, for the
agency.

Leonard G. Strickland, Allied Management of Texas, Inc., an
interested party.

George Ruppert, Esq., David Ashen, Esq., and John M. Melody,
Esq., Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

1. Procurement for transient aircraft services was properly
synopsized under maintenance and repair category of Commerce
Business Daily, even though requirement also covers certain
work that could be synopsized under housekeeping services,
where solicitation clearly includes significant proportion of
maintenance and repair work and, although other activities
previously have synopsized similar procurements under
housekeeping, prior procurement by this activity was
synopsized as maintenance and repair work.

2. Protest that agency deprived protester of an opportunity
to compete because it failed to furnish it a copy of the
solicitation is dismissed as untimely where procurement was
properly synopsized in the Commerce Business Daily, and the
protester did not file protest within 10 working days of the
closing date specified in the synopsis.

DECISION

Do-Well Service & Supplies, Inc. protests that it improperly
was excluded from competing under request for proposals (RFP)
No. F45603-90-R-9025, issued by the Department of the Air
Force for transient aircraft services at McChord Air Force
Base (AFB). Do-Well maintains that it was excluded from
competition due to misclassification of the Commerce Business
Daily (CBD) synopsis and the agency's failure to provide the
firm with a copy of the solicitation.

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We deny the protest in part and dismiss it in part.

The solicitation, issued as part of a cost comparison pursuant to Office of Management and Budget Circular No. A-76, was synopsisized in the CBD under category "J," "maintenance and repair of equipment," on May 3 and June 8, 1990; the synopsis specified a July 31 closing date for receipt of proposals. In addition, prior to issuance of the solicitation on June 15, and until the closing on July 31, notice of the solicitation was posted on the agency's bid board. The agency, however, did not provide Do-Well with a copy of the RFP and the firm, which did not otherwise obtain a copy, did not submit a proposal.

In its protest, Do-Well first contends that the solicitation was improperly synopsisized in the CBD under category "J," "maintenance and repair of equipment," rather than under category "S," "housekeeping services"; according to the protester, other contracting activities have synopsisized procurements for transient aircraft services under housekeeping services.

The agency, on the other hand, maintains that the procurement was properly classified in the CBD because the majority of the work specified in the performance work statement (PWS) involves maintenance and repair services, not housekeeping services. The Air Force notes that different activities previously have synopsisized transient aircraft services procurements under category "S," as well as under other categories, but takes the position that, those other procurements notwithstanding, transient aircraft services procurements properly should all be synopsisized under category "J" rather than category "S." In this regard, the Air Force notes that the prior procurement for transient aircraft services at McChord AFB was also synopsisized under category "J."

An agency's failure to synopsisize pending procurements in the CBD in a manner reasonably expected to provide potential offerors with actual notice of the pending procurement violates the requirement under the Competition in Contracting Act of 1984 to obtain full and open competition. A&C Bldg. and Industrial Maintenance Corp., B-230839, July 21, 1988, 88-2 CPD ¶ 67.

Based on the record, we think the notice in this case was sufficient; the agency reasonably classified the procurement under category "J" rather than under category "S." While the work under the PWS involves some services classified as housekeeping services, such as refueling aircraft, custodial services in government-furnished office space and grounds

maintenance for outside work areas, see Federal Acquisition Regulation (FAR) § 5.207, the Air Force reports, and Do-Well does not dispute, that the majority of the work is directly related to maintenance and repair services. For example, the solicitation requires that the contractor perform operational checks and minor maintenance on aircraft systems (including air frame systems, landing gear systems, engines and electrical systems) and ground support equipment, check and service engine oil, oxygen, hydraulics, and fuel, identify fluid leaks, check tires and struts, change wheel and tire assemblies, and otherwise maintain aircraft and government-furnished equipment. Further, the PWS specifically requires that the contractor's work force be comprised of qualified maintenance technicians who have completed formal training in aircraft maintenance.

The precise proportion of maintenance and repair work to the total requirement is not readily determinable from the RFP, which merely lists the different work requirements. It is clear, however, that a significant portion of the required work involves skilled maintenance and repair services. We thus see nothing unreasonable in classifying the services here under category "J." While the Air Force is unable to explain why different CBD classifications previously have been used by some other activities, those prior classifications do not change our view that the services here reasonably can be categorized as maintenance and repair; moreover, so categorizing the services here is consistent with the prior synopsis for transient aircraft services at McChord AFB. (Based on the position taken in its report, we presume the Air Force intends to assure that transient aircraft services procurements will be synopsized by all activities more consistently in the future.) The Gunneson Group Int'l, B-234141.8, May 16, 1989, 89-1 CPD ¶ 464.

Do-Well, a small business, also contends that, the CBD synopsis aside, the agency improperly failed to provide the firm with a copy of the solicitation, contrary to the provisions of FAR § 19.202-4, which generally requires that copies of solicitations be sent to small businesses on the bidders mailing list, or which have requested copies. Do-Well points out that it had specifically requested in 1988, and the agency had agreed, that the firm would be included on the bidder's mailing list for future solicitations for these services.

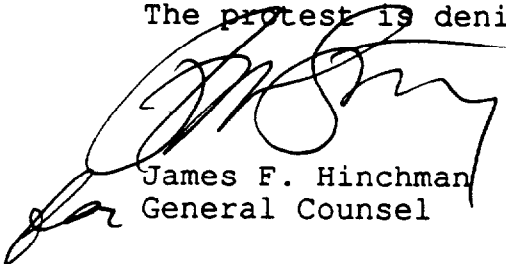
Where, as here, a contracting agency has properly synopsized a proposed procurement in the CBD, a potential contractor is on constructive notice of the solicitation and its contents and has a duty to make reasonable efforts to obtain a copy of the solicitation in order to ensure that it is included in the competition. Laser Alignment Inc., B-236906, Oct. 4, 1989, 89-2 CPD ¶ 310; The Gunneson Group Int'l, B-234141.8, supra. When Do-Well failed to receive a copy of the

solicitation by the July 15 closing date specified in the CBD synopsis, the last day on which it could have successfully submitted an offer for the contract, it was on constructive notice that it had not been solicited, which is the basis for its protest. Id. Under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1990), a protest concerning other than an apparent impropriety in the solicitation must be filed with the contracting activity or our Office within 10 working days after the protester knows or should have known the basis of its protest. Do-Well's September 17 protest to our Office of its failure to receive a copy of the solicitation, filed 2 months after the closing date, therefore is untimely. Id.

Moreover, even if it were timely, Do-Well's protest would not provide a basis for requiring resolicitation. A contractor generally bears the risk of not receiving a solicitation unless the failure to receive it is the result of a deliberate effort to exclude the offeror from competing, or the contracting agency inadvertently fails to furnish the solicitation after the offeror has availed itself of every reasonable opportunity to obtain it. See EMSA Ltd. Partnership, B-237846, Mar. 23, 1990, 90-1 CPD ¶ 326. We generally will sustain a protest only where the prospective contractor has acted to place the agency on notice of its interest in an ongoing synopsisized procurement. See, e.g., EMSA Ltd. Partnership, B-237846, supra; Essex Electro Engineers, Inc., B-234089.2, Mar. 6, 1990, 90-1 CPD ¶ 253.

Do-Well generally claims to have contacted the contracting officer concerning the procurement "in the past year," but it provides no dates or details substantiating any claimed contacts, and the contracting officer specifically denies having discussed the procurement with Do-Well during the past 2 years. Do-Well apparently did request in 1988 that it be included on the bidders list for these services. The agency explains, however, that due to a personnel change at that time, Do-Well inadvertently was not added to the list; the agency reports it now has included Do-Well on the bidders list for future requirements. In these circumstances, in the absence of any evidence that Do-Well ever advised the Air Force of its interest in the synopsisized procurement, there would be no basis for sustaining the protest.

The protest is denied in part and dismissed in part.



James F. Hinchman
General Counsel